

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/03/2004

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THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No. 29111 of 2003

and

W.P.M.P. No. 35515 & 35516 of 2003

V. Veeramani ... Petitioner

-Vs-

1. The Chief Security Commissioner

Railway Protection Force

Southern Railway

Chennai

2. The Divisional Security Commissioner

Railway Protection Force

Tiruchirapalli ... Respondent

Petition under Article 226 of The Constitution of India praying for a
Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mrs. A. Arulmozhi

For Respondents : Mr. R. Thiagarajan, Senior Counsel
for Mr. Aravind Pandian

:ORDER

The petitioner has come forward with this writ petition praying for a
Writ of Certiorarified Mandamus to call for the records of the respondent
dated 23-09-2003 in Memo No.SXT/P-227/R-153/VV/6/2003 and quash the same as
illegal and direct the respondents to pay all attended benefits from
01-09-2003 that is date of suspension.

2. By consent of counsel for both sides, the writ petition itself
is taken up for final disposal.

3. The petitioner is an Inspector of Police in RPF at Vridachalam
Junction. One Aboobakkar has made a complaint dated 07-08-2003 against the
petitioner and preliminary enquiry was conducted by a Junior Inspector of
Police one Mr. A. Chandrasekaran and an Assistant Security Commissioner Mr.
P.V. Shanmugam. They have recorded statements but not given any findings.
In the meantime, the 2nd respondent passed an order of suspension on

01-09-2003 alleging that an investigation into the charges for indulging in corrupt practice is contemplated. Charge sheet dated 23-09-2003 was issued to the petitioner. In annexure IV of the charge sheet, it is mentioned that preliminary enquiry report of P.V. Shanmugam, ASC/TPJ dated 26-08-2003 and report of Chandrasekaran, IPF/TPJ dated 29-03-2003 and the documents relied on for the enquiry along with statement of all the accused persons were annexed. It is alleged that no single statement has been recorded from the petitioner or from other constables against whom charges were levied. It was informed that one Mr. Renganathan was nominated as Enquiry Officer. Though an appeal has been preferred against the order of suspension, no order has been passed by the appellate authority.

4. Mrs. Arulmozhi, learned counsel appearing for the petitioner submitted that complaint was made by an accused, who was convicted for purchasing of stolen railway property; the charge memo does not make out prima facie case; a preliminary enquiry into a public complaint can be made against an inspector of force only by the officer, but enquiry was done by an Inspector and Assistant Security Commissioner, which is violative of Rule 248 of RPF Rules; the departmental proceedings are void abinito and contrary to the Railway Protection Force Act, 1957 and Rules 1987.

5. Mr. Thiagarajan, learned Senior counsel appearing for the respondents submits that after completing preliminary enquiry, the departmental enquiry has been initiated as such it is not open to the petitioner to question the preliminary enquiry, if at all, he can participate and refute the charges by placing valid evidence, if any and prayed for dismissal of the writ petition.

6. Preliminary enquiry is intended to make out a prima facie case against the delinquent and thereafter charges are framed and then regular enquiry is conducted. Preliminary enquiry is not only permissible but a very desirable step, because civil servants should not be charged with offences recklessly and without reason, but it is not a substitute for the departmental enquiry itself. So far as preliminary enquiry is concerned, there is no question of its being governed by Article 311 (2) of the Constitution. The statements of witnesses taken at the stage of preliminary stage of enquiry were used at the time of formal enquiry does not vitiate the enquiry, if those statements were made available to the delinquent officer and opportunity is given to cross-examine those witnesses if it is relevant. Followed (The State of Punjab Vs. Jagir Singh, Baljit Singh and Karnam Singh) AIR 1974 SC 1589. The preliminary fact finding enquiry may be done by the disciplinary authority or any subordinate authority or any authority appointed by the Disciplinary Authority.

7. In the decision reported in (Chambaklal Chimanlal Shah Vs. Union of India) AIR 1964 SC 1854 wherein it was held in para-12 as follows:-

12. ... In short a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a government servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry necessary under

Article 311 for inflicting one of the three major punishments mentioned therein. Such a preliminary enquiry may even be held ex parte, for it is merely for the satisfaction of government, though usually for the sake of fairness, explanation is taken from the servant concerned even as such an enquiry. But at that stage he has no right to be heard for the enquiry is merely for the satisfaction of the government and it is only when the government decides to hold a regular departmental enquiry for the purpose of inflicting one of the three major punishments that the government servant gets the protection of Article 311 and all the rights that that protection implies as already indicated above. There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that Article. That is why this Court emphasised in Parshotam Lal Dhingra's case 1958 SCR 828: (AIR 1958 SC 36) and in Shyam Lal v. State of Uttar Pradesh (1953) 1 SLR 26 (AIR 1954 SC 369) that the motive or the inducing factor which influences the government to take action under the terms of the contract of employment or the specific service rule is irrelevant.

8. Chapter XVII of Railway Protection Force Act, 1957 Rule 248 contemplates as follows:

"248.1: Whenever a complaint against the misconduct of any member of the Force is received from the members of the public or where such complaint is received through a Court wherein civil or criminal proceedings against a member of the Force have been instituted or otherwise, and controlling officer of such member of the Force is of the opinion that allegations are verifiable or otherwise an inquiry is called for, he may proceed to inquire himself into the complaint against a member of the Force specified in column (1) of the table below or depute any other officer as specified in the corresponding entry in column (2) of the said table:

TABLE

Members of the Force against whom complaints received Inquiry Officer.

(1) (2)

Constables/Naiks/Head Of and above the rank of
Constables Inspector

Sub-inspector/Assistant Of and above the rank of
Sub-inspector Assistant Commandant

Inspector/Assistant Of and above the rank of
Security Commissioner Security Commissioner

Security Commissioner Chief Security Commissioner
or above or the Additional or the
Deputy Chief Security

Commissioner, if so
authorised by him

9. Rule 248.3 contemplates the manner in which the inquiry is to be conducted, which runs as follows:-

"248.3 While conducting inquiries, the Inquiry Officer shall so far as may be possible, proceed as under:-

(i) Complaint shall be heard in detail and every effort shall be made by the Inquiry Officer himself to ascertain the truth by examining such of the witnesses as he may deem necessary, without insisting on the complaint himself to secure the presence of witnesses:

(ii) important witnesses shall as far as possible be examined in the presence of the complainant so that he has the satisfaction of what they depose:

(iii) throughout the conduct of inquiry, the Inquiry Officer shall scrupulously avoid doing anything which might create a doubt in the mind of the complainant about the objectivity and impartiality of the inquiry:

(iv) the inquiry shall as far as practicable be conducted at an appropriate public building or place in or near the complainant's place of residence."

10. It is not in dispute that the preliminary enquiry was conducted by Assistant Security Commissioner and a Junior Inspector of Police. The argument of Mrs. Arulmozhi, learned counsel appearing for the petitioner is that they are not above the rank of Security Commissioner. The above said fact was not disputed by the learned Senior counsel appearing for the respondents. The controlling officer may proceed to inquire himself into the complaint against a Member of the force as specified in column (1) of the table above or depute any other officer as specified with the corresponding entry in column (2) of the said table.

11. The preliminary enquiry is governed by the said Rules. It is generally held that any irregularity in a preliminary inquiry will not vitiate the subsequent proceedings. Where provisions of Article 311 (2) of the Constitution are complied with, violation of any of the Rules in regard to any antecedent enquiry is not material. Followed (Dr. Krishnamurthy Vs. State of Madras) AIR 1951 Madras 882.

12. The preliminary inquiry is not a judicial in character, but it is only a fact finding inquiry. It is desirable that competent persons are deputed for holding preliminary enquiry. In the absence of it, it would not vitiate the inquiry. Hence, the argument of the learned counsel appearing for the petitioner that incompetent persons have conducted the preliminary enquiry and

as such and disciplinary proceedings are vitiated is untenable.

13. In view of the above, the writ petition is dismissed. No costs. Connected WPMP is closed.

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Index : Yes

Internet : Yes

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